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C O N F I D E N T I A L SECTION 01 OF 02 MADRID 000822

SIPDIS

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TAGS: PHUM PREL SP UNHRC

SUBJECT: SPANISH RESPONSE TO 60TH SESSION OF THE UN
COMMISSION ON HUMAN RIGHTS DEMARCHE

REF: A. STATE 41252

1B. MADRID 0735

1C. CLASSIFIED EMAIL FROM MADRID TO SPAIN DESK ON 25
FEB 2004

Classified By: Kathleen Fitzpatrick, Political Counselor, for Reasons 1
.4 (b) and (d)

11. (C) Summary. The head of the MFA's Human Rights Office stated that Spain's priorities for the upcoming UN Commission on Human Rights (UNCHR) session are substantially the same as USG priorities, focusing on many of the same countries and issues. On sensitive subjects, he said that Spain will work within the EU to try to find compromises on wording for a Rights of the Child resolution and will seek to minimize the number of resolutions regarding the death penalty. Spain's most pressing concern this session, however, will be in responding to the February 6 report by the UN Special Rapporteur on Torture that concluded that torture of ETA terrorist suspects is practiced to a degree in Spain. That report may have broader implications as it strongly criticizes incommunicado detention of terrorist suspects. The report also concludes that allegations of torture, even if acknowledged as a tactic used by terrorist groups to falsely discredit a government, cannot be discounted due to the Rapporteur's belief that incommunicado detention facilitates torture. End summary.

12. (C) We delivered reftel A demarche to Juan Manuel Cabrera, MFA Human Rights Office Director, on March 8. When asked about Spanish priorities for the 60th Session of the UNCHR, Cabrera said that they are supporting resolutions on Belarus (will co-sponsor with EU), Turkmenistan, Afghanistan (sharing USG concerns that an Independent Expert has not been appointed), Russia-Chechnya (introduced by the EU), East Timor, North Korea, Nepal, Burma, Congo, Zimbabwe (though maintaining dialog with Mugabe government), Sudan, Colombia and Cuba. He stated that he had not heard if Canada would be introducing a resolution on Iran, but that Spain would likely support such a resolution. Similarly, he had not heard who would introduce a Cuba resolution this session, but thought that Costa Rica would be a likely candidate (Note: President Aznar has reportedly pressed Honduran President Maduro to introduce the Cuba resolution (ref B)). Cabrera inquired as to whether the USG had decided to introduce a China resolution. When informed that we were still studying the issue, he stated that Spain would wait to see the text before making a decision. He reiterated Spain's position that China is making slow progress on human rights, but said he felt that at times the dialog was a little bit "good for nothing" (reiterating the case Charge made to Deputy Foreign Minister Gil-Casares (ref C), we took this opportunity to provide Cabrera with a digital copy of the 2003 Human Rights Report for China). Cabrera further stated that Spain agreed that now was not the time for a resolution on Iraq and that he is not aware of anyone supporting the introduction of an Iraq resolution this session.

13. (C) Regarding our request for support in opposing unbalanced resolutions against Israel, Cabrera said that Spain was also opposed to inflammatory resolutions and that they would work to limit the number of resolutions on Israel, possibly even down to one combined resolution. (Comment: While Post is encouraged by Cabrera's statement, we note that the Spanish MFA made the same statement of support before the last session, but went on to follow the common EU line in voting for resolutions that condemned Israel. End comment).

14. (C) Cabrera said that Spain's theme-based issues would be terrorism, racism, the death penalty, Rights of the Child, and a EU-backed resolution on anti-Semitism. He mentioned that Spain and the EU would also be looking with interest to a resolution on Israeli settlements proposed by the Arab group. In response to demarche talking points regarding resolutions on the Rights of the Child and the death penalty, he said that Spain would work within the EU to find compromise wording for the Rights of the Child resolution that could be acceptable to the USG. He said Spain would "do its best" on seeking EU support for a single death penalty resolution, though he seemed less optimistic on this point.

15. (C) Cabrera stated that Spain agrees with the USG that the UNCHR is not the appropriate forum for a resolution on corporate conduct, and has problems with the Norms proposed

by the Sub-Commission. He also mentioned that Spain and the EU would vote against "no-action" motions, and that Spain supports the idea of developing a network of democratic countries in the UNCHR. Responding to the talking point question on where Spain saw an opportunity for USG assistance, he stated that the Russia-Chechnya issue was one in which coordinated US-EU lobbying would be useful.

16. (C) Cabrera explained that along with this overall agenda, Spain would be responding forcefully to the report issued by the UN Special Rapporteur on Torture, Theo Van Boven, regarding his October 2003 visit to Spain. In that report, dated February 6, Van Boven concludes that torture, namely of ETA terrorist suspects held incommunicado for short periods, is practiced by Spanish authorities. The report acknowledges that there is evidence that ETA instructs its members to claim torture whenever they are detained as a tactic to falsely discredit the Spanish government. However, Van Boven concludes that because of the consistency of these allegations and his belief that, by its nature, incommunicado detention facilitates torture, instances of torture in Spain are "more than sporadic or incidental". The Spanish response, dated March 4, is 87 pages in length and details what the Spanish believe are factual errors, baseless conclusions, and faulty methodology on Van Boven's part. Specifically, the Spanish criticize Van Boven for using second-hand accounts and anonymous sources, all lacking evidence to back their allegations. The Spanish response also criticizes the Van Boven report for not considering the possibility that the allegations of torture are consistent for the very fact that Van Boven acknowledges, that ETA instructs its members on what to say.

17. (C) Comment: This report could have broader implications in that Van Boven concludes that any practice of holding terrorist suspects without allowing outside contacts of the detainee's choosing can constitute torture. In his recommendations (paragraph 66), Van Boven writes "Since incommunicado detention creates conditions that facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture, the incommunicado regime should be abrogated". This statement has ramifications on governmental efforts to ensure that detained terrorist suspects do not pass operational information to their associates on the outside. Cabrera said that while there is not a vote to accept this report, Spain would appreciate the support of its allies on this matter, either in writing as an addition to the Spanish response or in discussions of the Van Boven report at UN meetings. Post has discussed ETA allegations of torture with Amnesty International and the Spanish Ombudsman's Office in its research for annual Human Rights Reports, and both organizations agree that no proof exists to substantiate those claims, nor has any other pattern of abuse of prisoners by Spanish authorities been noted. Post recommends that USG UN representatives convey our findings as appropriate. End comment.

18. (C) Wrapping up the meeting, Cabrera renewed Spain's request for USG assistance in lobbying for their candidacy for one of the three WEOG seats on the UNCHR, recalling that it was Spain's withdrawal of their candidacy that allowed the USG to return to the commission after losing our seat on the UNCHR.

ARGYROS